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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TAILORED SYSTEMS, INC., et al., Plaintiffs, Cross-defendants, and Respondents, v. MARK RABIN et al., Defendants, Cross-complainants, and Appellants,	B171069 (Los Angeles County Super. Ct. No. BC259690)

APPEAL from a judgment of the Superior Court of Los Angeles County, George H. Wu, Judge. Affirmed.

Law Offices of Kenneth S. McFarlan and Kenneth S. McFarlan for Defendants, Cross-complainants and Appellants.

Jay-Allen Eisen Law Corporation, Jay-Allen Eisen and C. Athena Roussos for Plaintiffs, Cross-defendants and Respondents.

This is an appeal from a judgment confirming an arbitration award in a breach of contract action. We affirm.

FACTS

A.

In 1998, Mark Rabin (then living in Maryland) sold a controlling interest in his wholly owned computer consulting company, Rabin Associates, Inc., to Guy Covington (a Nevada resident) for $1,700. Covington changed the name of the company to Tailored Systems, Inc., and agreed that he would "cause the corporation" to pay commissions to Rabin for all orders he obtained after the stock transfer (Rabin was to continue to work for the corporation) and through August 14, 2003. Rabin, in turn, agreed he would not compete with Tailored Systems in the United States for a period of five years. The contract included a provision for binding arbitration for all disputes other than a breach of the covenant not to compete, and the arbitration provision made "[a]ll decisions of the Arbitrator . . . final, binding, and conclusive on the parties."

B.

In October 2001, Tailored Systems and Covington sued Rabin and Rabin Consulting, Inc. (Rabin's new company) for breach of the covenant not to compete and interference with prospective business advantage, seeking damages and injunctive relief. According to the complaint, Rabin came to California, where he actively competed with Tailored Systems, as a result of which his employment with Tailored Systems was terminated. In a separate cause of action labeled as a "Petition for Arbitration and Express Reservation of Right to Arbitrate," Covington demanded arbitration of a dispute about the

commissions owed to Rabin, and alleged that he did not intend the complaint to constitute a waiver of his contractual right to arbitrate that particular claim.

Rabin and Rabin Consulting answered and cross-complained against Tailored Systems and Covington. In his answer, Rabin alleged he had engaged in permitted consulting services, not prohibited computer sales, and that he thus had not breached the covenant not to compete. In the cross-complaint, framed in part as a shareholders derivative action, Rabin alleged that Covington had "refused to cause" Tailored Systems to pay Rabin the sums due under the agreement, and he sought damages from Covington and Tailored Systems for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and interference with prospective business relations. In an additional cause of action for declaratory relief, Rabin alleged that neither Rabin Consulting nor Tailored Systems were signatories to the agreement between Rabin and Covington, and that the non-signatories were not bound by the arbitration provision.[1] He allowed as how he and Rabin Consulting would be agreeable to having all matters heard in a non-binding arbitration with full discovery.

C.

In February 2002, Covington and Tailored Systems filed a petition to compel arbitration. Rabin and Rabin Consulting opposed the motion, and a hearing was held at which the court encouraged the parties to reach an

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[1] In fact, the agreement is signed by Covington as "Majority Shareholder" and by "Tailored Systems, Inc., a Maryland Corporation," by Guy Covington, President.

agreement, which they did, and which agreement became the order of the trial court (signed and entered on March 20, 2002), as follows:

> "The Court considered all issues raised at oral argument and papers submitted in support of and in opposition to said Petition [to compel arbitration], and invited counsel to attempt to reach a mutually-acceptable agreement regarding arbitration.
>
> "After conferring, the parties stipulated to the following:
>
> "1. All causes of action, raised in the Complaint and Cross-Complaint, will be submitted to binding arbitration.
>
> "2. The arbitration proceedings will be conducted before JAMS (the Judicial Arbitration and Mediation Service).
>
> "3. In the arbitration proceedings, the parties will have all discovery rights available under the California Code of Civil Procedure.
>
> "4. The civil action, Complaint and Cross-Complaint, in the Court is stayed pending the completion of arbitration.
>
> "5. The status conference previously set . . . for May . . . will be continued to September . . . ."

D.

The arbitration was held in October 2002, and the arbitrator (Hon. Richard Neal, Ret.) issued an interim award and statement of reasons in February 2003. The arbitrator rejected Covington's and Tailored System's claims, and found in favor of Rabin on his cross-complaint, with Tailored Systems and Covington taking nothing, and Rabin recovering $104,460 from Tailored Systems. In March, after further briefing of cost and fee issues, the arbitrator awarded Rabin $86,227 in costs and fees (for a total of $190,687), and with that addition the interim

award became the arbitrator's final award. The award provides that all "claims and cross claims not expressly addressed" are rejected.

In April, Rabin (and Rabin Consulting, which is included in our subsequent references to Rabin) filed a petition to confirm the arbitrator's award. Before that petition was heard, Rabin switched gears and asked the arbitrator to amend the award to include Covington as a judgment debtor. The arbitrator rejected Rabin's request because (1) it was untimely, (2) Rabin had not specifically requested relief against Covington during closing arguments or in briefs, (3) Rabin did not object to the interim or final awards when issued, "each of which afforded him relief only against Tailored [Systems] and not against Covington," and (4) Rabin did not show during the arbitration that Covington was the alter ego of Tailored Systems and thus personally liable for the corporation's debts.

The parties then returned to the trial court, where Rabin withdrew his petition to confirm the award and in its place filed a petition to vacate it, this time claiming the arbitrator had exceeded his jurisdiction by awarding damages only against Tailored Systems and not against Covington personally. Tailored Systems and Covington filed a petition to confirm the award, and opposed the petition to vacate it. The trial court, in turn, denied the petition to vacate and confirmed the award as requested by Tailored Systems and Covington.

Rabin appeals from the judgment thereafter entered.

DISCUSSION

Rabin contends the arbitrator lacked jurisdiction to award damages against Tailored Systems for breach of the agreement because, according to Rabin, Tailored Systems was not named in any of Rabin's claims that would give rise to damages. In fact, claims Rabin, he had no right of direct action against Tailored Systems because it was not a party to the agreement. Rabin is wrong.

The scope of an arbitrator's jurisdiction is a matter of agreement by the parties (*Crowell v. Downey Community Hospital Foundation* (2002) 95 Cal.App.4th 730, 734), and the agreement at issue here, as agreed to by the parties and signed by the court, gave the arbitrator the power to decide "[a]ll causes of action, raised in the Complaint and Cross-Complaint." Since Rabin's cross-complaint prayed for damages against both Covington and Tailored Systems -- and since the thrust of Rabin's cross-complaint was that Covington had "refused to cause" Tailored Systems to pay Rabin the sums due under the agreement, and because Tailored Systems was, in fact, a party to the agreement, it is plain that the arbitrator had jurisdiction to do what he did.

Rabin's other arguments are nothing more than a rehash of his central theme, rejected above, that he really wanted a judgment against Covington and not against Tailored Systems. Because the relief Rabin got was part of what he prayed for, and because an arbitrator has great latitude in fashioning an equitable award, Rabin has no basis for complaint. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28; *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 373, 381.)

DISPOSITION

The judgment is affirmed. Tailored Systems and Covington are awarded their costs of appeal, including attorneys' fees in an amount to be determined by the trial court.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

SPENCER, P.J.

SUZUKAWA, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.